



chair **John Chiang**
member **Betty T. Yee**
member **Michael C. Genest**

State of California
Franchise Tax Board

06.02.09

Gina Rodriquez
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Dear Ms. Rodriquez,

Thank you for your presentation at the Taxpayers' Bill of Rights Hearing held on December 4, 2008. Although we provided email responses to the issues you raised at the hearing except the Revised Texas Franchise Tax issue, the following is our official response.

Claiming Refunds of Estimated Tax Payments

We will explore the feasibility of enhancing the amended return processing and tax accounting systems to allow overpayments to be applied as an estimate tax payment to a future year. Section 19322(b) (see below) allows the overpayment to be credited, but only after the taxpayer is notified that the claim has been allowed. The FTB must first accept the amended return before the taxpayer's request to apply the overpayment can be honored. This may create a timing issue when the amount of overpayment, and whether or not it is allowed, is not determined by the due date of the estimated tax payment.

Pursuant to 19322(b), "Taxpayers may not, on their own initiative, offset overpayment for one year or in one installment against taxes due for another year or in another year or in another installment. The full amount of the tax or any installment thereof for each year must be paid notwithstanding that an overpayment may have been made, unless the taxpayer has filed a claim for refund of the overpayment and has been notified that the overpayment has been credited on the tax or installment due."

Suspend Collection Action When Claim Pending

Legally, FTB can continue to collect the balance due until and unless the refund claim is allowed. Our agents are instructed not to place a tax year hold until the refund claim has been allowed. However, if supporting documentation can be provided showing the claim for refund will likely be allowed, the agent may place a tax year hold for a reasonable time allowing the claim to be evaluated. This is a discretionary process only.

Processing some claims for refund takes longer because of the nature of the claim or the quality of the documentation. For example, claims for refund associated with a federal action cannot be processed until we have received notice that the federal action has gone final.

Accelerated Estimated Tax Payments

As the result of legislation enacted last year, new California estimate payment requirements began January 1, 2009. This new law changed the percentage amount for estimated tax installment payments from four equal installments of 25 percent of the required annual amount to installments of 30 percent of the required annual amount for each of the first two installments and 20 percent of the required annual amount for the last two installments. The new law did not change withholding requirements, therefore, wage earners do not need to change their withholding to address the change to the percentage amount for estimated tax installment payments, so long as the total amount of tax owed with the return for 2009 or 2008, after being reduced by credits and taxes withheld for the applicable year, is less than \$500 (\$250 in the case of a married individual filing separately). This \$500 threshold was increased this year. In previous years, the threshold was \$200.

Unlike an estimated tax installment payment, which must be paid in an amount required by the law to avoid an underpayment penalty for a particular installment, taxes on wages do not need to meet the percentages for estimated tax installment payments to avoid the penalty for underpayment of estimated taxes. Taxes withheld on wages can vary substantially over the year and withholding can be increased at anytime during the year to meet the less-than-\$500-owed threshold and avoid the penalty. If, however, taxes withheld for a taxable year and credits for a taxable year do not reduce taxes owed to less than \$500 for the current year or the prior year, then a taxpayer may need to make estimate payments, paid in the required installments, to avoid the penalty for underpayment of estimated tax.

Revised Texas Franchise Tax

Response is pending.

Sincerely,

Steve Sims, EA
Taxpayers' Rights Advocate

cc: Hon. John Chiang, Chair
Hon. Betty T. Yee, Member
Hon. Michael C. Genest, Member